

CHAPTER 7-000 SUBSIDIZED GUARDIANSHIP PROGRAM

7-001 Introduction: The Nebraska Department of Health and Human Services subsidized guardianship program provides continued financial assistance to a child after a legal guardian has been appointed and the Department's custody has been terminated.

7-001.01 Purpose: The subsidized guardianship program is designed to ensure that financial barriers or costs associated with a child's needs do not prevent the appointment of a guardian for a child as a preferred alternative to long term foster care.

7-001.02 Legal Basis: State funds may be used for subsidized guardianship payments on behalf of a child who was a Department ward, as provided in Neb. Rev. Stat., section 43-284.02.

7-001.03 Use of Other Resources: The guardian must use all available resources, benefits, and programs, including but not limited to private insurance coverage, care or services available through the education system.

7-002 Child's Eligibility: A child is eligible for the subsidized guardianship program if s/he is a ward of the Department and meets the criteria for guardianship as follows:

1. The child has a documented behavioral, emotional, physical, or mental disability;
2. The child is a member of a sibling group of three or more to be placed together;
3. The child has a strong attachment to the potential guardian and has lived successfully for a minimum of six months in the home of the potential guardian;
4. The child cannot return home despite all efforts to effect reunification;
5. The child cannot be adopted and all attempts to terminate parental rights have failed or the termination is not in the child's best interest;
6. The child is age 12 or older or, if under 12, is part of a sibling group or is attached to the proposed guardian and cannot be freed for adoption; and
7. The prospective guardian and the child can function effectively without Department supervision.

A child's eligibility ends upon the child's 19th birthday, when the child becomes emancipated or self-supporting, or when the guardianship order is terminated.

{Effective }

7-003 Agreement Prior to Guardianship Order: The agreement for subsidy, specifying type, amount, and duration of subsidy must be completed and approved before the order establishing guardianship is issued.

Any subsidy payments begin after the guardian has been appointed by the court.

7-004 Determining the Guardian's Need for Subsidy: When guardianship becomes the appropriate plan for the child, the child's worker must determine whether the prospective guardian will be able to meet the child's needs without subsidy. The worker must assess the following with the family:

1. Need for Subsidy
 - a. The child's present and anticipated future needs; and
 - b. The prospective guardian's ability to meet those needs without subsidy. The assessment must consider other programs, benefits, or resources available to meet the child's needs, including but not limited to:
 - (1) Public assistance including:
 - (a) Maintenance payments. If the ward is eligible for ADC, s/he also receives medical assistance.
Note: Nebraska guardians are not eligible for ADC payments, although specified relatives who are guardians or conservators are eligible for ADC relative payments if they meet other eligibility criteria;
 - (b) Medical assistance only. If the child needs medical assistance, the worker completes Form EA-117. Eligibility for MA is a separate determination from eligibility for subsidy. Eligibility is determined using CMAP guidelines (see Title 477;
 - (2) Supplemental Security Income (SSI), Veterans benefits, Social Security benefits, or Railroad Retirement benefits;
 - (3) Child support;
Note: Establishment of a guardianship does not eliminate the potential for child support by a parent. Child support can be ordered by the court to be paid directly to the guardian.
 - (4) Medically Handicapped Children's Program; and
 - (5) Private insurance coverage by the prospective guardian.

2. Type(s) of subsidy: In some cases, only one or two types of subsidy coverage will be necessary.
3. Amount: If maintenance or other costs incidental to care of the child are being considered:
 - (a) The amount must be no more than payment would be if the child had remained in the Department's care;
 - (b) Explore other maintenance payments or financial resources. The worker shall explain that any maintenance payments will be deducted from the agreed-to maintenance under subsidy; and
 - (c) If the guardian receives an ADC-relative payment, the worker must establish a level of need for the child based on FCPAY and subtract \$222 for the maintenance payment. The remainder is the subsidized guardianship payment. If a family provides guardianship for siblings, deduct \$222 from the determined payment for the youngest child and \$71 for each of the older children.
4. Duration: Discuss how long the guardian anticipates needing assistance.

Assistance for child care or respite care ends when the child reaches age 13 unless the child has a special need. See 474 NAC 7-006.01 for the definition of special needs for child care.

{Effective }

7-004.01 Subsidy Approval: The worker and supervisor must complete and submit Form DSS-74, "Guardianship Referral Form," to the designated service area adoption staff for signature.

{Effective 9/20/95}

7-005 Types of Subsidy: Subsidized guardianship may include one or more of the following:

1. Maintenance: This includes monthly payments to the guardian to assist in meeting the child's day-to-day needs. The amount must not be greater than what would be paid for the child in foster care.
2. Medical/Surgical: This may include the following:
 - a. Payments to a medical practitioner for medical or surgical care. Payment is made by Medicaid at the Nebraska Medicaid rate; or
 - b. Payments for Residential Psychiatric Care (see 479 NAC 7-007).
3. Other Costs Incidental to the Care of the Child: This includes payment for a specific service or item related to special needs of the child, including, but not limited to:
 - a. Legal fees to obtain the guardianship not to exceed the usual and customary rate for such services within the community;
 - b. Expenses for transportation, lodging, and meals for the child and one adult to enable the child to receive medical care. Amounts paid must be no more than those paid for foster care (see 479 NAC 2-004.09B3); or
 - c. Expenses related to modifying a home to accommodate a special needs child, such as installation of a ramp, or widening of doors. The maximum to be paid is specified on the subsidy agreement.

{Effective }

7-005.01 Medical Assistance Provided Out of State: If the child and guardian live in another state, the child is eligible for medical assistance through Nebraska Medicaid as long as the child is receiving a maintenance payment from Nebraska.

If the child does not receive a maintenance payment from Nebraska, the child is no longer eligible for Nebraska Medicaid.

{Effective 9/20/95}

7-006 Initial Application and Agreement: The agreement for subsidy must be completed and approved before the guardianship is finalized. The agreement must include the type, amount, and duration of the subsidy. To obtain a subsidized guardianship, Form PS-74, "Subsidized Guardianship Agreement," is required.

The worker sends the completed form to the designated person in the service area. The designated person approves or disapproves the subsidy and returns the form to the worker. The worker advises the prospective guardian of the decision. If subsidy is approved, the worker continues with the plans for finalizing the guardianship. If subsidy is denied, guardianship may still be pursued without subsidy or the worker may need to consider other permanency options.

{Effective 9/20/95}

7-007 Residential or Inpatient Psychiatric Care

7-007.01 Type of Care: To be covered under subsidized guardianship, inpatient or residential care must be:

1. Provided in a facility licensed or approved by the appropriate agency for therapeutic or psychiatric care; and
2. Psychiatric or mental health treatment.

This care does not include that provided by foster or group homes or child caring agencies.

7-007.02 Length of Care: Residential Psychiatric Care may be provided under subsidized guardianship for a maximum of two years.

7-007.03 Restrictions: The Department will approve payment for residential or inpatient psychiatric care only if:

1. Care is anticipated to result in progress which will enable the child to return to the guardian or community;
2. Less restrictive or acute care alternatives or treatments are not appropriate or available, or have refused to accept the child;
3. The child cannot obtain appropriate care in the guardian's home or community;
4. The child's guardian will continue to remain involved with the child in planning for and making possible the return home;
5. This type of placement is in the child's best interests;
6. Other resources, including those of the child's parent(s), benefits, or programs are not available to cover the care; and
7. Approval for the placement is given by Nebraska Health Connection.

{Effective }

7-007.04 Documentation Required: Department staff must obtain the following documentation:

1. A report from a licensed psychiatrist or licensed clinical psychologist which includes:
 - a. The presenting problem to be treated;
 - b. Goal of treatment;
 - c. Treatment which will be received;
 - d. Anticipated results of treatment;
 - e. Need for the proposed level of treatment as opposed to less restrictive alternatives; and
 - f. Discharge plan, including available treatment resources.
2. A statement from the guardian which includes:
 - a. How s/he will remain involved with the child in planning for the return home;
 - b. How s/he will participate financially in the treatment and in meeting the child's needs, including the use of private insurance and personal resources;
 - c. Plans for treatment and his/her involvement in the child's treatment after discharge;
 - d. Commitment to the child returning home.

{Effective 9/20/95}

7-007.05 Approval/Denial Process: When a guardian requests approval for coverage of out-of-state residential treatment, the following process must be used:

1. The worker must:
 - a. Discuss with the guardian the requirements and coverage which might be available, including use of other resources and the need for documentation;
 - b. If appropriate, contact the child's parent(s) to determine the extent to which they can assist in covering costs;
 - c. Assist the guardian in locating and considering less restrictive alternatives or programs, if appropriate;
 - d. Assist the guardian in completion of Interstate Compact forms, if potential placement is out-of-state (see 474 NAC 5-024); and
 - e. Submit a written recommendation for approval of care and necessary documentation to the approval team. This recommendation must include the worker's and supervisor's opinion whether:
 - (1) This placement is the least restrictive alternative available;
 - (2) This placement is in the child's best interest;
 - (3) The guardian is involved and planning for the child's return home; and
 - (4) The request should be approved;
2. Nebraska Health Connection will approve or deny the placement; and
3. The worker must notify the guardian of the decision regarding placement or continued stay.

{Effective }

7-007.06 Adjustment in Maintenance: When the child is approved for residential or inpatient psychiatric treatment, the worker must document with the guardian what, if any, maintenance the guardian will be providing for the child's needs (e.g., clothing or transportation to maintain the relationship with the child), and reduce the maintenance payment as appropriate.

{Effective }

7-007.07 Process After Placement: While the child is in residential or inpatient care, the worker must obtain progress reports from the facility every three months. These reports must show:

1. Progress toward the treatment goal;
2. Continuing need for treatment;
3. Prognosis and estimated length of treatment; and
4. The guardian's involvement in treatment and/or planning for return home.

The worker must review the reports, consult with his/her supervisor, and submit the reports with a recommendation regarding continuation of coverage for care to Nebraska Health Connection.

{Effective }

7-007.08 Payment Termination: The Department will no longer provide payment if:

1. Reasonable progress is not occurring and it is determined that treatment at that facility is no longer appropriate;
2. Treatment is no longer needed;
3. The plan is not to return the child to the guardian's home;
4. The guardian is no longer involved with the child or participating in treatment; or
5. Reports providing the information in 479 NAC 7-007.08 are not provided to the Department.

The worker must send written notice of payment termination to the guardian giving the date on which payment will cease; a minimum of 30 days notice is required. (A copy must be sent to the foster care specialist.)

Note: If the guardian has ceased his/her involvement with the child, the worker must consider whether a child protective services referral is appropriate.

{Effective 9/20/95}

7-008 Deletions or Termination in Subsidy: A subsidy can be terminated, a service deleted, or a maintenance payment decreased because of the following factors:

1. Terms of the agreement have terminated;
2. The Department determines that the guardian is not legally responsible for the support of the child or the child is not receiving any support from the guardian;
3. The child's eighteenth birthday;
4. The guardian fails or refuses to be legally responsible for the support of the child, or to use the maintenance payment to meet the child's needs;
5. The child is no longer residing with the guardian. If the child resides outside of the guardian's home, s/he must:
 - a. Be attending college or vocational training; or
 - b. Have been placed out-of-home for reasons other than school, and the guardian is cooperating in a plan for the child's return home. In this case, the worker must document with the family what portion of the maintenance is being used for the child's needs and decrease or stop the payment accordingly;
- Note: For a temporary absence, see 479 NAC 7-009.
6. The guardian requests termination of the subsidy;
7. A change in regulations or law makes the child no longer eligible for a subsidy;
8. The guardian refuses to cooperate in the process of renewing the agreement;
9. The child no longer needs the medical care or special services that were specified in the subsidy agreement; or
10. The child dies.

Note: Subsidy benefits cannot be transferred even if the court appoints a new guardian.

{Effective }

7-009 Child's Temporary Absence: Subsidy may continue for a maximum of 90 days if a child is not residing with the guardian for reasons other than those specified in 479 NAC 7-008, if the plan is for the child and the guardian to be reunited.

{Effective 9/20/95}

7-010 (Reserved)

7-011 Closing Department Ward Case: Following receipt of the court order granting the guardianship, the worker must close the Department ward case.

7-012 Annual Review: The worker must review the guardianship subsidy every 12 months to determine the level of continued need and continuing eligibility.

{Effective 9/20/95}

7-013 Right to Appeal: The guardian has the right to a fair hearing if the Department denies the application for subsidy or reduces or terminates the agreement.

7-014 Child Support Enforcement Services: The guardian has the responsibility to apply for non-public assistance child support services.

{Effective 6/8/98}